

LC28NUNC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 MARK NUNEZ, et al.,

4 Plaintiffs,

5 v.

11 Cv. 5845 (LTS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

Remote Conference

8 -----x

9 December 2, 2021  
10:00 a.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,

12 Chief Judge

13 APPEARANCES

14 THE LEGAL AID SOCIETY  
15 Attorneys for Plaintiff Class  
16 BY: MARY LYNNE WERLWAS  
17 KAYLA SIMPSON  
DAVID BILLINGSLEY

18 EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP  
Attorneys for Plaintiff Class  
19 BY: JONATHAN S. ABADY  
DEBRA L. GREENBERGER  
20 NAIRUBY BECKLES

21 DAMIAN WILLIAMS  
United States Attorney for the  
Southern District of New York  
22 JEFFREY K. POWELL  
LARA K. ESHKENAZI  
23 Assistant United States Attorneys

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APPEARANCES (Continued)

GEORGIA PESTANA

Corporation Counsel of the City of New York

BY: KIMBERLY JOYCE

Assistant Corporation Counsel

STEVE J. MARTIN

Court Monitor

ANNA E. FRIEDBERG

Deputy Court Monitor

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1 (The Court and parties appearing by videoconference)

2 (Case called)

3 THE COURT: I would now ask the video participants who  
4 will be speaking for the parties and the monitor to introduce  
5 themselves, to state their appearances, beginning with the  
6 monitor.

7 MR. MARTIN: Good morning, your Honor. My name is  
8 Steve J. Martin, court monitor, in the matter of *Nunez v. City*  
9 *of New York*.

10 THE COURT: Good morning, Mr. Martin.

11 The deputy monitor.

12 MS. FRIEDBERG: Good morning, your Honor. My name is  
13 Anna E. Friedberg, and I am the deputy monitor on the  
14 monitoring team.

15 THE COURT: Good morning, Ms. Friedberg.

16 Counsel for plaintiffs.

17 MS. WERLWAS: Good morning, your Honor. Mary Lynne  
18 Werlwas, from the Prisoners Rights Project of the Legal Aid  
19 Society, for the plaintiff class.

20 THE COURT: Good morning, Ms. Werlwas.

21 Counsel for the U.S. Attorney's Office, for the  
22 government.

23 MR. POWELL: Good morning, your Honor. Jeffrey Powell  
24 with the U.S. Attorney's Office.

25 THE COURT: Good morning, Mr. Powell.

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1 Counsel for the defendants.

2 MS. JOYCE: Good morning, your Honor. This is  
3 Kimberly Joyce for the City of New York and the defendants.

4 THE COURT: Good morning, Ms. Joyce.

5 I greet other counsel, members of the press, and  
6 members of the public who may be listening in since this is a  
7 public proceeding. And I would ask that all who are listening  
8 in keep their phones muted. And I would ask that the video  
9 participants also keep themselves muted when they are not  
10 speaking.

11 I remind everyone that as provided in the Court's  
12 January 19, 2021 standing order, neither recording nor  
13 retransmission of any part of this conference is permitted.

14 I will be calling on each speaker during the  
15 conference. Each time that you speak, please identify yourself  
16 by name for clarity of the record and for the benefit of those  
17 who only have audio access. Please don't interrupt each other  
18 or me during the conference. If we interrupt each other, it's  
19 difficult to create an accurate transcript. But having said  
20 that, and as usual, I apologize for breaking the rule because I  
21 may interrupt if I have questions.

22 I will give the attorneys an opportunity to make  
23 additional comments or ask questions at the end of the  
24 conference, but if anyone has difficulty hearing me or another  
25 participant, please say something right away.

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1           Since the emergency conference in September, the  
2           monitoring team, the city and the department have been working  
3           at pace to address the issues the monitor has highlighted in  
4           its recent status reports. The monitoring team has reported  
5           that the work to date has resulted in some gains, and the Court  
6           expresses its appreciation to the monitoring team and the  
7           parties for their diligent efforts in addressing the severe  
8           conditions in the city jails. The Court expects to hear more  
9           today about what has changed, what hasn't, and the specific  
10          steps that are being taken to improve safety and ensure humane  
11          conditions.

12          Today's conference was scheduled to discuss the  
13          defendants' efforts to implement the monitoring team's  
14          recommendations included in the second remedial order, which is  
15          docket entry number 398, and the city's ongoing initiatives  
16          included in Appendix A to the monitoring team's September 23,  
17          2021 report, which is docket entry number 404.

18          The monitor has submitted status reports setting forth  
19          the stages of implementation of these recommendations and  
20          initiatives, which can be found at docket entries 403 and 420.

21          The defendants submitted a status report detailing  
22          their efforts to implement the ongoing initiatives articulated  
23          in Appendix A, and that is at docket entry number 404.

24          In addition, the parties proposed, and the Court  
25          adopted, a third remedial order focusing on ensuring timely

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1 accountabilities for use-of-force violations and addressing a  
2 substantial backlog in proceedings concerning use-of-force  
3 violations. That is at docket entry number 424.

4 The Court has attended carefully to these reports as  
5 they have come in.

6 I would like to begin by asking the monitor for a  
7 general status update on current conditions and areas of focus  
8 from their perspective.

9 MR. MARTIN: Thank you, your Honor. This is Steve  
10 Martin. In order to conserve the Court's time, and hopefully  
11 to make my remarks more measured and thoughtful, I have  
12 prepared a statement that I will read, if it's all right with  
13 the Court.

14 THE COURT: Yes.

15 MR. MARTIN: Thank you, your Honor.

16 The downward spiral toward patently unsafe conditions  
17 in DOC that brought us before the Court in late September has  
18 been to some degree ameliorated by measures taken by the  
19 governor's office, city officials, and, most importantly, the  
20 Department of Corrections. To varying degrees these measures  
21 have diminished the dire conditions set out before the Court on  
22 September the 24th. This is not to say that the very serious  
23 issues of unsafe conditions have been eliminated. Make no  
24 mistake, much remains to be done to render safe living  
25 conditions to both staff and detainees in the DOC.

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1           During my presentation before your Honor on September  
2 the 24th, I spoke of the need to move toward "a  
3 back-to-basics/corrections 101" approach to managing detainees.  
4 I also talked of the importance of managing immediately  
5 dangerous detainees after they have engaged in seriously  
6 assaultive behaviors. I then advocated for the infusion of  
7 correctional management expertise into the system to accelerate  
8 a move toward sound correctional practices. Allow me to now  
9 report out DOC's movement towards these aims.

10           We recommended a series of interim security measures  
11 or a back-to-basics approach. The department has issued  
12 directives on staff remaining on posts, they have reinstituted  
13 roll call with emphasis on door security, they have instituted  
14 suspensions for officers who have abandoned posts during  
15 assaults on other detainees, they have mandated strict  
16 adherence to restraint practices for seriously assaultive  
17 offenders, they have reiterated policies related to security  
18 inspections, they have instituted directives on limiting  
19 detainees access to secure areas, and they have instituted  
20 safeguards on key control and other security equipment that too  
21 often fall into the hands of detainees. Can I attest that  
22 these measures are bearing fruit? No. But I can attest it is  
23 a start.

24           Let me now return to another issue of great importance  
25 of harm to the plaintiff class detainees -- intake. There is

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1 no question that the new admission intake process was broken.  
2 Conditions were clearly inhumane. The DOC moved the new  
3 admissions process to the Eric M. Taylor facility, or EMTC, as  
4 it is called. This move almost immediately ameliorated the  
5 dire conditions. Is the new admissions process cured? No.  
6 But this move clearly eliminated pervasive harm. Are some  
7 detainees not processed within 24 hours? Yes. But they are  
8 far fewer than what we saw at the time of the hearing. Are  
9 there still processing issues remaining? Yes. But we are  
10 pressing DOC to address them.

11 Another issue of safety and harm was the DOC's  
12 management of detainees who engage in serious acts of violence  
13 toward other inmates. We refer to this as post-incident  
14 management. In other words, what do you do with detainees in  
15 the immediate aftermath of them harming other detainees? We  
16 cited incidents in reports to the Court that DOC was not  
17 properly managing such detainees; in other words, they were  
18 left to reengage in further acts of violence. Since September,  
19 a specific protocol was developed and put into place to manage  
20 such offenders. A very able member of the DOC Nunez compliance  
21 team has monitored vigorously the implementation of this  
22 protocol and meets frequently with executive staff to guide  
23 their implementation of the protocol. Again, are there  
24 problems with this protocol? Yes. But the agency is now aware  
25 of their obligation to manage these offenders. Heretofore,



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1 they were basically left unchecked in some instances to engage  
2 in further acts of violence.

3 A final word on specific issues. My office  
4 recommended the retention of a recognized expert on strategies  
5 to manage detainees with gang affiliations. They are presently  
6 in the process of retaining such an expert who is a recognized  
7 leader in offender classification. I can attest that he will  
8 bring much needed expertise to DOC on this issue.

9 I will now defer to the deputy court monitor to add  
10 detail to other critical areas of DOC's efforts to move toward  
11 improving the safe operation of the New York City jails and to  
12 outline our recommendations for a path forward.

13 THE COURT: Thank you, Mr. Martin.

14 Ms. Friedberg.

15 MS. FRIEDBERG: Good morning, your Honor. My name is  
16 Anna Friedberg.

17 Following up on Mr. Martin's statement, I wanted to  
18 walk through where we go from here. How and why did we get  
19 here and where do we go? We have spent probably the last six  
20 years thinking through that, the last 100 days since we first  
21 sent this status report in August of this year, and the last 60  
22 days in which both the second and third remedial orders have  
23 been entered by the Court.

24 There were three guiding principles as we started to  
25 think through how best to recommend moving forward. The first

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1 is that we really strongly believe that change must come from  
2 within the agency itself. Those that work within the  
3 department have to be empowered to change and fix it. Of  
4 course, they are going to need support in doing that, and that  
5 reinforces two of the recommendations that the monitoring team  
6 made both at the end of the eleventh monitoring period and  
7 throughout this period now. One is the expansion of the  
8 criteria in which the department can obtain wardens such that  
9 they can recruit and identify individuals to serve in these  
10 leadership roles that do not necessarily come up through the  
11 uniform rank. The second is the potential appointment of a  
12 security operations manager who can help serve and mentor those  
13 staff and set the new expectations of what is necessary.

14 The second is that we need to focus on certain  
15 foundational issues. And those must be prioritized before we  
16 move forward trying to address the plethora of requirements in  
17 the consent judgment and the three remedial orders. I will get  
18 to those in a second, but I just raise that, as we thought  
19 forward, we had to identify what is achievable and what can be  
20 done to build the foundation upon which the department can  
21 continue to improve and have sustainable reform.

22 Finally, we recognize that reasonable expectations  
23 must be set, such that we understand perfection is not  
24 ultimately the goal here, but a realistic approach to what can  
25 be achieved. That really drove the monitoring team to think

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1 through how do we get where we need to go? That identified yet  
2 another list, that is, the foundational issues that we think  
3 really need to be built in order for us to move forward. Those  
4 four are:

5 Security practices and procedures are deeply flawed.  
6 They must be addressed.

7 Second, the inadequate supervision of line staff as  
8 well as the inadequate expertise that they have in which to  
9 guide those staff in doing what they must do and get  
10 back-to-basic corrections 101, as Mr. Martin spoke about  
11 earlier.

12 The third is with respect to the department's staffing  
13 practices and procedures and the ineffective deployment of  
14 staff throughout the agency.

15 The fourth is limited and extremely delayed  
16 accountability for staff misconduct.

17 I will take each of those in turn very quickly.

18 With respect to staffing practices and procedures, I  
19 already briefly noted that we have made recommendations with  
20 respect to both the expansion of the criteria for facility  
21 leadership and a security operations manager. Mr. Martin also  
22 spoke about some of the interim security plans already  
23 underway. Those certainly will need to be expanded and become  
24 in line with many of the initiatives outlined in the first  
25 remedial order. We will talk through each of those as we walk

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1 through the conference later, so that's just a preview on that  
2 particular item.

3 With respect to staffing practices, the monitoring  
4 team has initiated a staffing analysis, which, again, I am  
5 happy to go into a little bit more detail as we go through the  
6 conference, but we recommend that that work is done in order to  
7 determine how best to deploy staff.

8 Then, finally, the practices with respect to imposing  
9 timely discipline must be revised and reworked. That work has  
10 been outlined in the third remedial order, which was signed  
11 very recently by the Court, and that work has already begun  
12 with the monitoring team and the department and time is now  
13 necessary for us to work forward.

14 So that's just an outline of where we think we need to  
15 go to move forward, and we expect that in the coming weeks,  
16 months, that will be where we spend our time and focus with the  
17 department.

18 I look to forward any questions you may have or any  
19 other information you require from us, your Honor.

20 THE COURT: Thank you, Ms. Friedberg.

21 I will first hear the status statements from the other  
22 parties, starting with counsel for the city.

23 Ms. Joyce.

24 MS. JOYCE: Yes, your Honor. Good morning.

25 I also prepared a brief written statement that I will

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1 read. I know Mr. Martin and Ms. Friedberg have covered some  
2 ground already and I am not sure how specific the Court wants  
3 me to get, so I will read this and then I welcome any  
4 questions.

5 Good morning, your Honor. The department, the city,  
6 in collaboration with the monitoring team, have been working  
7 tirelessly to improve conditions for the people incarcerated at  
8 department facilities and for the officers who continue to come  
9 to work every day despite the challenges they face. While  
10 there is much work to be done, and we are committed to that  
11 work, there have been improvements that give hope that the  
12 conditions that gave rise to the monitoring team writing the  
13 Court over the summer are moving in the right direction. We  
14 are committed to continuing our collaborative and transparent  
15 relationship with the monitor and the monitoring team as we  
16 work to tackle these challenges.

17 Early indicators are that violence and use-of-force  
18 data are bending in the right direction, as the population  
19 declines, with fewer unstaffed posts and fewer triple shifts  
20 for officers. The department and the city made great efforts  
21 to decrease the detainee population, which is down from about  
22 6,000 detainees in September to about 5200 currently. There  
23 have also been declines in triple shifts, in AWOLs, absent  
24 without leave, and then the number of unstaffed posts. And we  
25 anticipate seeing greater declines in those areas in the coming

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1 weeks and months.

2 The mayor additionally signed two executive emergency  
3 orders. One on September 15, which now I cannot recall if that  
4 was before or after our last conference. I apologize.

5 THE COURT: That would have been before the last  
6 conference.

7 MS. JOYCE: That emergency order, your Honor, covered  
8 AWOLs and suspensions of staff without pay for 30 days, it  
9 concerned improving the sick leave policies, it allowed NYPD to  
10 take over court operations, and it suspended certain  
11 procurement rules and regulations so that the department could  
12 hire certain staff without having to go through the city's  
13 procurement procedures.

14 This past week's executive order also allowed the  
15 department to amend its tour schedules, going to 12-hour tours,  
16 which we believe will alleviate the triple shifts and overtime.  
17 This is just a short-term solution to the problem that we  
18 believe is going to bear fruit.

19 Finally, the department has new staff beginning in  
20 late December as well as mid-January, with a new entry class at  
21 the academy beginning in March of 2022. While the size of that  
22 class is unclear, 1600 people passed the test needed to enter  
23 the academy, so that will be the outer limit of what the class  
24 size is. So six months from then, in August or September of  
25 2022, you should therefore have another class of officers

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1 beginning at the academy.

2 Since the last conference also, in the efforts to  
3 decrease the population, the department has transferred the  
4 women from the Rose M. Singer Center to the Bedford Hills  
5 Correctional Facility in Westchester, New York, and has ensured  
6 that services are continuing for the women that are at that  
7 facility. And that was an effort to help decrease the  
8 population.

9 So, your Honor, I know that Mr. Martin and Ms.  
10 Friedberg talked about the efforts to improve security so I  
11 don't want to retread ground there, but that is essentially  
12 where we are at this moment. We are continuing the  
13 relationship with the monitoring team. We are being as  
14 transparent as possible. We are working, and when I say "we,"  
15 I mean the department are working very hard, in very  
16 challenging circumstances, and we will continue to work hard to  
17 improve the lives of those who live on Rikers Island and who  
18 work there.

19 And I welcome any questions from the Court or the  
20 monitoring team when you feel appropriate.

21 THE COURT: I will just ask you one now.

22 What are you able to say about the status of the  
23 response to the recommendations to bring in outside expertise?

24 MS. JOYCE: When you say outside expertise, do you  
25 mean contract staff or actual wardens or above at the

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1 department?

2 THE COURT: I understand that there are two issues.  
3 So one is being able to bring people in as wardens. Well, I  
4 guess three issues. Then there is a classification consultant  
5 recommendation, and a person to come on staff as the security  
6 operations manager. I referred to them all as outside because  
7 they presume people coming in from outside of current staff and  
8 regular channels.

9 MS. JOYCE: Yes, your Honor.

10 So as Mr. Martin and Ms. Friedberg indicated, we are  
11 in the process of retaining the two experts, the classification  
12 expert and the security operations manager expert.

13 Ms. Friedberg, correct me if I am misspeaking.

14 MS. FRIEDBERG: I'm sorry. Say that again.

15 MS. JOYCE: I just wanted to say that the department,  
16 in terms of the classification expert, we are in the process of  
17 retaining that person, and we are in agreement with the  
18 security operations manager. So it's just in terms of getting  
19 those two people on board.

20 MS. FRIEDBERG: With respect to the classification  
21 expert, that is true. My understanding from my work with the  
22 department is that they have begun working with him. I think  
23 there may be some contractual issues, but I think otherwise  
24 that work has started at least in earnest.

25 With respect to the security operations manager, the



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1 department has been engaging with the monitoring team to  
2 determine the contours of what that role has been. It has been  
3 an active engagement between the monitor, myself, and both the  
4 commissioner and other high-ranking officials within the  
5 department. As to what that role exactly looks like, we are  
6 not yet certain, whether it might be one individual or a team  
7 of people.

8 So that's just the only caveat I would share, is that  
9 those discussions are still ongoing with respect to exactly how  
10 that role will work. But that work has been ongoing and, in  
11 fact, was subject to discussions that the monitor and I had  
12 with the commissioner as early as yesterday, or as late as  
13 yesterday. So that work continues, but it is one that cannot  
14 be entered into lightly. So we have been giving it a lot of  
15 thought with respect to what that role would look like, what  
16 their responsibilities would be, and what would their areas of  
17 focus be, both within the agency itself and the specific topic  
18 areas that they may be covering.

19 THE COURT: So do I correctly understand, then, that  
20 someone has been identified for the classification expert role  
21 and is beginning to work with the department even while the  
22 formalities of the role are being attended to; is that correct?

23 MS. FRIEDBERG: Yes, your Honor. Mr. James Austin has  
24 been selected. We actually recently modified the remedial  
25 order to reflect the fact that he has been selected, and the

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1 department consulted with the monitor prior to that  
2 determination, and that work has started.

3 THE COURT: Thank you.

4 As to the security operations manager, it is still in  
5 the stage of defining the role and not in the stage of  
6 identifying a specific person or people to occupy that role;  
7 would that be correct?

8 MS. FRIEDBERG: Maybe a slight modification, your  
9 Honor. It's somewhat of a simultaneous discussion. There have  
10 been particular individuals under consideration, but that  
11 partly relates to what the responsibilities would be. So it's  
12 a little bit of a -- it has to be a parallel track of  
13 discussion. And ultimately we anticipate that we also will be  
14 needing to consult with the plaintiff class and the U.S.  
15 Attorney's Office on this as well. We just have not been able  
16 to develop a full package yet to get there, but those  
17 discussions are ongoing, both in considering potential  
18 individuals for the role as well as what that role would  
19 entail. What the role entails may determine who the person is.  
20 Who the person is may impact some of the responsibilities as  
21 well. So that's why it's being done a little bit in tandem  
22 right now.

23 THE COURT: Thank you.

24 Ms. Joyce, I think you were beginning to speak and I  
25 cut you off, so please.

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1 MS. JOYCE: No, that's fine. I was just going to  
2 confirm that the classification consultant has the contract in  
3 hand, it's almost finalized, and he is already receiving data.  
4 So he is, in fact, working even though some of the logistical  
5 things have not yet been finalized.

6 THE COURT: Thank you, Ms. Joyce. That's all I had  
7 for you by way of questions at this stage. Is there anything  
8 else you wanted to say at this point?

9 MS. JOYCE: Not at this moment, your Honor. Thank  
10 you.

11 THE COURT: Thank you, Ms. Joyce.

12 So I will turn now to counsel for the government.

13 Mr. Powell.

14 MR. POWELL: Good morning, your Honor. It's Jeffrey  
15 Powell for the government.

16 Just some brief words to start. The government  
17 obviously remains extremely concerned about the ongoing  
18 extraordinary level of violence and disorder at the jails, the  
19 ongoing alarming high staff absenteeism rates which have shown  
20 little improvement over the last couple of months -- and I will  
21 talk about that in a second -- and the ongoing failure, the  
22 recognized failure, to comply with core provisions of the  
23 consent judgment and the remedial orders recently entered.

24 The department's failure to follow basic security  
25 protocols, competently manage its line staff, and adequately

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1 supervise detainees, as has been documented in detail in the  
2 monitors' many thorough reports, continues to create an unsafe  
3 environment and an ongoing imminent risk of harm for inmates as  
4 well as department staff and anyone who has to work or be in  
5 the jails.

6 We understand that some improvement has been made  
7 recently, but we would like to bring the Court's attention to  
8 certain data that makes it clear how much work still needs to  
9 be done.

10 Our understanding, based on the information we have  
11 from the monitor and recent data reported, is that the rate of  
12 use of force in the jails is higher than it has ever been.  
13 Just since September alone, there were 728 use-of-force  
14 incidents. The rate of force is multiples of what it was when  
15 this consent judgment was entered in 2015, where there were  
16 unconstitutional conditions at the facility. The rate of  
17 inmate-on-inmate fights is higher than it's ever been. The  
18 rate of stabbings and slashings is higher than it's ever been.  
19 According to the data we had, there were 51 stabbings or  
20 slashings in the jails in September alone.

21 Some words have been said about absenteeism and we  
22 understand the department has made efforts and has suspended  
23 many folks for being AWOL, but the data shows little  
24 improvement in the numbers. It has been consistent and the  
25 recent data we have, it goes all the way through November 25.

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1 It still remains that about 30 percent of the uniform staff at  
2 the department are out sick on any given day, AWOL, or on  
3 medically restricted status where they can't interact with  
4 inmates. The numbers have moved a little bit in the 30 percent  
5 range day-to-day, but they are pretty constant from what they  
6 were when we were before your Honor back in September.

7 On November 25, according to the data reported by the  
8 city, of the 8,051 uniform staff, 1523 were out sick, 818 were  
9 on medical restricted status, and 50 were AWOL. This has led  
10 to a high number of unmanned shifts, where at a post there will  
11 be no uniform staff assigned to a post at all for a shift.  
12 Those numbers have gone up and down a little bit over the last  
13 couple of months, but on multiple occasions there were over 100  
14 unmanned posts in the city jail system in October.

15 There have also continued to be double and triple  
16 shifts that have been way too frequent, and it is just too much  
17 to ask of a correction officer to manage inmates in a safe way  
18 working 16, 24 hours at a time. I understand the city has  
19 shifted to a 12-hour work shift in light of the vaccine mandate  
20 and the staffing challenges, but the hours are still the same;  
21 you will have staff either working 12 hours or sometimes 24  
22 hours. It still is asking too much of correction officers.

23 And what I would like to hear the city discuss today  
24 is, is this the new normal, where basically close to a third of  
25 their uniform staff are not going to be interacting with

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1 inmates on a given day and available to work? If that is the  
2 case, then they need to plan accordingly, and we need to have a  
3 plan for that. But we are not seeing, despite good faith  
4 efforts by the department, suspensions of folks who have been  
5 AWOL for many months. We still don't see the number  
6 significantly decreasing. And the policy is still that  
7 correction officers have unlimited sick leave. And we  
8 understand the challenges that presents for the department, but  
9 it is a reality.

10 Finally, as far as data, there is still -- the monitor  
11 has talked about this -- an ongoing failure to adhere to basic  
12 core security protocols and get very straightforward things  
13 done. One example, back in September it was identified that  
14 900 cell doors in RNDC, the facility that houses the youngest  
15 inmates and others, 900 cell doors needed to be replaced.  
16 According to the report submitted by the city on October 14,  
17 300 of those doors have been replaced. They plan to replace  
18 another 250 by February of 2022, and there was no deadline for  
19 the other doors.

20 I am just bringing up this example because these are  
21 simple things that raise serious concerns. If the department  
22 cannot promptly fix inoperable doors of cells in the jails,  
23 it's hard to expect things to improve dramatically no matter  
24 what the good faith efforts of the monitors, they certainly  
25 have put in hours and hours of time working with the department

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1 to get things done, but things still are not getting done  
2 efficiently.

3 Just to conclude, two issues I would like to raise  
4 with respect to the remedial order entered back in September  
5 after we last appeared before your Honor.

6 We remain extremely frustrated by the lack of progress  
7 that has been made in implementing the monitors'  
8 recommendations to deal with the deficiencies in the  
9 corrections expertise at the management level in the facility.  
10 Your Honor alluded to the monitors' recommendation and what was  
11 contemplated in the remedial order was to expand the criteria  
12 for hiring facility leadership positions -- wardens, deputy  
13 wardens -- so that the department could look outside the  
14 uniform ranks to find the most qualified, experienced people to  
15 run their jails. My understanding is that has reached a  
16 roadblock. The city's position, I think, and I want to hear  
17 from them today, and I would ask them to respond, is that there  
18 are legal impediments, state and local laws, that prevent them  
19 from hiring folks with expertise to run their jails outside of  
20 the uniform ranks. So I think we would like to understand, is  
21 the city saying that it is unable to do that, to hire outside  
22 folks? Do they need your Honor to issue an order requiring  
23 them to do that to remedy the constitutional violations that  
24 are ongoing? Would the city consent to such an order? Those  
25 are the issues that I think are very important, as we sit here

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1 today, that that initiative is stalled, as far as I understand  
2 it, and we would just like to take this opportunity to get a  
3 better understanding of what can be done to move that forward.

4 The other issue, and the city has addressed this a bit  
5 earlier, was the recommendation to hire an outside expert to be  
6 the security operations manager. We are pleased to hear today  
7 that the city has firmly committed to hire such person or  
8 people. We are happy to hear that. We understand that it's a  
9 complex process to figure out the precise role and to find the  
10 right candidate, but this is desperately needed. I would like  
11 the city to address what a proposed time frame might be or a  
12 time to report back to the Court as to what the role would be,  
13 who will fill it, and what a timeline is for hiring that  
14 person. Because as each day passes, more use-of-force  
15 incidents happen, more slashings, more correction officers are  
16 injured, and more staff are harmed. So we would like some  
17 specifics on the plan to implement that recommendation today.

18 So the core recommendations of the monitor were to  
19 bring in outside help. And we understand the consultant has  
20 been hired to look at that particular issue of how to house  
21 gang members in units most safely, but that is one small piece  
22 of the overall need to infuse this department with much more  
23 expertise in the basics of corrections, and that's where we  
24 think we need to go from here. And if the city can't hire  
25 people outside to bring them in, the government will need to



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1 consider with plaintiff class other alternatives to get past  
2 these legal impediments.

3 Thank you, your Honor.

4 THE COURT: Thank you, Mr. Powell.

5 I will go back to Ms. Joyce on these questions before  
6 I call on Ms. Werlwas so that we have the best information base  
7 we can have before Ms. Werlwas speaks.

8 Actually, Ms. Friedberg has her hand up. So I will  
9 call on Ms. Friedberg first and then Ms. Joyce.

10 MS. FRIEDBERG: Thank you, your Honor.

11 I just wanted to clarify one piece of information  
12 mentioned by the government. I believe that the way in which  
13 the monitor produced certain data led to a potential  
14 miscommunication.

15 With respect to the fixing of the cell doors at RNDC,  
16 the department has committed to fixing all 900 doors within the  
17 facility. That does not actually mean that all 900 doors  
18 within the facility are, in fact, inoperable. That certainly  
19 is probably a lack of clarity in the way in which I produced  
20 that report to the Court. So I just wanted to clarify that,  
21 while not every door has been replaced, the goal of replacing  
22 the doors is to ensure that there are doors that are less  
23 likely to be manipulated. But that does not mean that because  
24 they are replacing all 900 doors, that, in fact, those doors  
25 are in fact inoperable. They just tend to be of an older type

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1 in which manipulation of that door could be more likely. And  
2 so that is why the process of replacing doors is occurring  
3 throughout the facility.

4 Right now the department does not even utilize every  
5 cell door within RNDC. I, unfortunately, at this time don't  
6 have data for you with respect to how many doors may be  
7 inoperable at this given moment and whether or not they are in  
8 use with an incarcerated individual. But I just did want to  
9 clarify that our reporting out of the replacement of 900 doors  
10 was not intended to reflect the fact that all 900 doors were  
11 inoperable. So I apologize for that lack of clarity in our  
12 communications to the Court and to the parties.

13 THE COURT: Thank you for that clarification.

14 So, Ms. Joyce, first, the status of the recommendation  
15 to hire people from outside into warden positions.

16 MS. JOYCE: Well, your Honor, could I flip them  
17 because I believe Ms. Friedberg is the one that would have the  
18 best information about how long the timeline will take for the  
19 security operations manager, which was one of the questions  
20 Mr. Powell asked.

21 THE COURT: So that's the one that you want to start  
22 with?

23 MS. JOYCE: Yes. Only because Ms. Friedberg just  
24 spoke about how they are simultaneously on the path of  
25 discussing the contours of the role, as well as candidates for

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1 the role depending on the contours. So I don't have a timeline  
2 for when that will be completed. I think that timeline is best  
3 within Mr. Martin and Ms. Friedberg's hands as to the  
4 definition of the role and who they identify is appropriate.  
5 Plus, they indicated that they would need to have conversations  
6 with plaintiffs' counsel and the government. So I am not sure  
7 how long they intend that to take. So that's not something  
8 that's within my knowledge frame.

9 THE COURT: Understood. Thank you.

10 Ms. Friedberg, if you could take this in at least two  
11 chunks. First, how long do you believe it will take to be  
12 ready for the conversations with the government and plaintiffs'  
13 counsel. And then I understand that you wouldn't be able to  
14 project precisely how long those conversations would take, but  
15 assuming that at some point that results in an agreement on a  
16 strategy, how long do you think it would then take to implement  
17 the strategy?

18 MS. FRIEDBERG: Sure, your Honor.

19 I have not fully vetted a timeline even with Mr.  
20 Martin himself, so I am going to have to say that some of this  
21 will be subject to some internal conferring after the fact, but  
22 at least to advise the Court that certainly this is the highest  
23 priority of the monitoring team. I would anticipate that  
24 within the next two weeks -- we owe a report to the Court on  
25 December 22 -- that we would be in a position to identify the

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1 status of the discussions with the city and then provide a  
2 timeline from there.

3 One factor I must note that gives me some hesitancy  
4 with committing to a timeline right now is that we are about to  
5 enter into a new administration for the city. What impact, if  
6 any, that may have on these discussions, especially given the  
7 impact of this role, must be considered. I cannot in good  
8 conscience ignore that fact right now. The city has remained  
9 committed in discussing this role, but I think that ultimately  
10 Mr. Martin and I will have to confer with respect to how long  
11 it may take to ultimately flesh this out and the timeline, of  
12 which I would propose that we share that in our next report on  
13 December 22.

14 THE COURT: Thank you.

15 Ms. Werlwas, did you want to speak on the record? I  
16 saw your mouth moving and you were muted. I didn't want to  
17 skip over you.

18 MS. WERLWAS: Thank you, your Honor. My co-counsel is  
19 here in the office with me, Ms. Simpson, and others are on the  
20 line.

21 If we may briefly, your Honor, if now is appropriate.

22 THE COURT: Well, I wasn't about to call on you in the  
23 ordinary course now. I thought you might have wanted to make a  
24 comment on what Ms. Friedberg had said.

25 MS. WERLWAS: No, your Honor. Thank you.

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1 THE COURT: So I will go back to Ms. Joyce then on the  
2 first question, which is the city's perspective on legal  
3 liability at this point of hiring outside people into warden  
4 positions.

5 MS. JOYCE: Yes, your Honor. Thank you.

6 Believe me, your Honor, there is nothing that we would  
7 like more than to be able to easily bring in outside expertise  
8 to the level of warden through chief of department, but the  
9 current legal landscape prevents that. Unfortunately, I have  
10 learned a lot more about employment law over the past couple of  
11 months than I would have liked, and we have had extensive  
12 discussions with Ms. Friedberg on this, but there are certain  
13 civil service laws, state civil service laws, city  
14 administrative code, correction law provisions, that prevents  
15 the department from hiring outside of the current uniform ranks  
16 for the uniform positions of warden through chief of  
17 department. I have discussed with my colleagues and legal  
18 counsel the options to get around those laws and it's not as  
19 easy as the snap of a finger. My office engaged with the  
20 state, and while there may be some wiggle room -- and, Ms.  
21 Friedberg, we should continue those discussions -- I don't  
22 believe that the state is willing to suspend those laws,  
23 especially when we don't have any candidates for the position.  
24 It might be different if we had people who were interested in  
25 coming to the department to be wardens, but so far

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1 conversations have been a little fruitless.

2           Additionally, I did speak to my colleagues about the  
3 potential for your Honor to just sign an order suspending the  
4 laws that would then allow us to hire from outside, and it's  
5 not as easy as that either. I was told that there are  
6 significant separation of powers questions. There are  
7 federalism concerns with this option. There are public policy  
8 concerns. So those were all considered in our analysis that  
9 it's just not something that we can do right now with the laws  
10 the way that they are.

11           I see Mr. Powell has his hand raised. I am happy to  
12 have a conversation offline with Mr. Powell and Ms. Werlwas  
13 with those who could better explain the interplay between the  
14 civil service laws, the admin codes, our inability to hire, and  
15 what the obstacles are.

16           THE COURT: Thank you, Ms. Joyce.

17           Mr. Powell.

18           MR. POWELL: Your Honor, I would just like to point  
19 out that, in our view, and I think the legal counsel for the  
20 class may add to this, but under the PLRA, it's our view that  
21 your Honor could enter an order requiring the city to hire  
22 outside folks if the federal law requires such relief, which we  
23 believe it does. The relief is necessary to correct the  
24 violation of a federal right, which given the monitors'  
25 detailed, repeated over the years, documentation of the lack of

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1 quality supervision in these facilities, we think that criteria  
2 can be met, and that no other relief will correct the  
3 violation. I am just repeating what is in 18 U.S.C.  
4 3626(a)(1)(B).

5 So we think that order is within what your Honor could  
6 authorize. We initially would want to engage with the city,  
7 and I think this question has been posed to the city before  
8 this call, and I understand it's a complex one and Kim has to  
9 talk to her client, but our first question is whether the city  
10 would consent to such an order that would, in essence, waive  
11 any applicable state or local law that would prevent them from  
12 making these hires.

13 So that is an issue we think is ripe for discussion.  
14 We want to move forward on that issue. I am happy to talk to  
15 the city and their experts. But ultimately, even if their view  
16 is that the law, as a labor law matter, poses an impediment, we  
17 do think that your Honor can issue an order, given these  
18 egregious conditions, that can basically waive those laws.

19 Just one other point. I am not sure what the city or  
20 the department has done with outreach to find folks who may be  
21 qualified. I am not doing the outreach, I don't know, but if  
22 the question is getting candidates and then presenting them to  
23 the state and having laws waived based on specific candidates,  
24 then I wonder what efforts the city has made to identify those  
25 candidates across the country. I didn't realize those outreach

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1 efforts have been made, but if there are candidates, I think  
2 that would strengthen the position if they actually selected  
3 candidates who were interested and qualified.

4 Thank you.

5 THE COURT: Ms. Werlwas has her hand up now, and so I  
6 will call on her before going back to Ms. Joyce.

7 MS. WERLWAS: Your Honor, my apologies, but the  
8 mechanical raise-hand function does not seem to be working.

9 THE COURT: The physical one worked just fine.

10 MS. WERLWAS: Your Honor, for the order of the  
11 conference, I did want to contribute to this discussion very  
12 specifically about this particular topic and can confine my  
13 remarks just to this right now or talk more generally.

14 THE COURT: I would like to be able to close the loop  
15 on an action and consultation plan with respect to the wardens  
16 issue, and so I would invite your comments on that now. I will  
17 go back to Ms. Joyce about a meet-and-confer and sharing  
18 information moving forward.

19 MS. WERLWAS: Thank you. This can be brief.

20 We fully endorse what the government just spoke about  
21 the paths forward. We, as the city noted, have had extensive  
22 conversations with the monitor about this topic, but I profess  
23 some deep concern that we certainly, despite months of  
24 discussing this issue, have yet to receive anything but a  
25 rather cursory explanation of their legal position. That is



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1 not to say we necessarily disagree with their views on the  
2 application of state and local laws. We simply just don't know  
3 what they are.

4 That being said, what we think is critical to come out  
5 of today understanding is, as Mr. Powell noted, using the  
6 provisions of the PLRA that specifically understand and  
7 contemplate that courts in this position, needing to implement  
8 relief, prospective relief, that does intersect with state and  
9 local law, have a path forward. It's a statutory path that  
10 Mr. Powell identified. We think abundantly clear that the need  
11 for this relief is well established on this record. The  
12 question is whether the city will consent to seeking an order  
13 from your Honor, as we have negotiated and approached your  
14 Honor with negotiated stipulated relief to date, or whether  
15 that is not a path forward. And we think it's very critical  
16 that we understand their position on whether or not they will  
17 join us in seeking a path forward or whether that is something  
18 that we will have to seek from the Court through a contested  
19 motion.

20 THE COURT: Thank you, Ms. Werlwas.

21 Ms. Joyce.

22 MS. JOYCE: Yes, your Honor. Thank you.

23 If I may make a proposal, because as Mr. Powell and  
24 Ms. Werlwas alluded to, I will need to speak to stakeholders in  
25 my office about their proposal. I think some of our concerns

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1 internally was also about the Court's willingness to endorse  
2 such request if it was to be brought before the Court.

3 So I believe the monitoring team has another report  
4 due on the 22nd. So I would propose that I engage with my  
5 stakeholders on the specific question that Mr. Powell and Ms.  
6 Werlwas raised about whether or not we would consent to an  
7 order under 18 U.S.C. 3626(a)(1)(B) on this specific topic,  
8 that I have that conversation with my stakeholders and report  
9 back to the parties, and that we can inform the Court on or  
10 about December 22 about whether or not we consent to that  
11 application, oppose the application, or whether or not there is  
12 some other path forward. And during that time I can also  
13 endeavor to do my best to explain or get colleagues on the  
14 phone to help explain our views on the legal impediments to  
15 Mr. Powell and Ms. Werlwas.

16 THE COURT: So is the December 22 time frame  
17 coincident with a reporting date? I'm sorry. I haven't  
18 memorized the calendar at this point. So that would be 20 days  
19 out from now.

20 MS. JOYCE: I think that's when Ms. Friedberg will be  
21 submitting the third remedial order report on the first and  
22 second remedial order.

23 THE COURT: Ms. Friedberg is nodding yes.

24 MS. FRIEDBERG: It's the third remedial order report  
25 about the first, second, and third remedial orders.

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1 THE COURT: Thank you.

2 Ms. Werlwas.

3 MS. WERLWAS: Your Honor, just for clarity, I am not  
4 certain that I understand the city's position or proposal about  
5 what should transpire. Is it that by December 22 the city will  
6 inform the parties of their consent to an order? And if so,  
7 why do we need to wait until December 22? It seems, if we  
8 could get their position, then we could report to the Court by  
9 December 22 whether the issue has been resolved or whether it  
10 will need motion practice.

11 MS. JOYCE: Your Honor, that was my intent, to inform  
12 the Court in the December 22 status report, which would thereby  
13 presume that Ms. Werlwas and Mr. Powell would have gotten our  
14 positions in advance of that so Ms. Friedberg can inform the  
15 Court on December 22.

16 THE COURT: So you anticipate providing more  
17 information of the basis of your position, doing your internal  
18 consultations, and informing Mr. Powell and Ms. Werlwas, and  
19 presumably the monitoring team, as to whether the city  
20 anticipates being in a consent posture sufficiently in advance  
21 of the December 22 reporting date that that December 22 report  
22 will be able to reflect the parties' respective positions as to  
23 whether we are heading in a consent direction or whether we  
24 would be heading in a litigation direction, and I guess in  
25 either case, propose mechanics and timetable. Is that a fair

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1 summary of what you are proposing, Ms. Joyce?

2 MS. JOYCE: Yes, your Honor.

3 THE COURT: Thank you.

4 Mr. Powell has his hand up.

5 MR. POWELL: If I may just follow up on that. I  
6 understand it's a complex issue. It is arising out of a  
7 recommendation the monitor made as early as May of this year,  
8 but I understand the city has to confer. My only question is,  
9 if that is the proposal, given the realities of the timing here  
10 and the end of this current administration, whether it will be  
11 feasible, if the city is in a consent position, to execute a  
12 consent order and have appropriate sign-off before the change  
13 in the administration and how that would play out.

14 I guess our preference would be, if there is consent  
15 from the city, that's obviously up to them, that December 22 be  
16 set as a deadline to submit an actual proposed order. It will  
17 be fairly straightforward hopefully. So we would just request  
18 that the deadline be December 22 to actually submit a proposed  
19 order. If there is no agreement, obviously there is no  
20 agreement, and then the monitor would set forth the parties'  
21 positions. That would be my respectful proposal to your Honor  
22 just given the timing here.

23 THE COURT: So the goal would be, in your proposal, a  
24 consent order, if that's going to happen, by December 22. And  
25 in the absence of the consent order, the joint report, which

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1 would in your view then anticipate litigation given the time  
2 frame. Am I hearing you correctly?

3 MR. POWELL: Yes, your Honor. I think it would be the  
4 monitors' report, they would set forth the parties' positions,  
5 like they have done in prior instances with your Honor, and  
6 then we would evaluate how to go from there, whether it's  
7 litigation. But it would set forth either as a consent order  
8 for you to sign off, if you deem appropriate, or the parties'  
9 positions if they don't reach a consent order. That would be  
10 our proposal.

11 THE COURT: Ms. Joyce, considering the timing and the  
12 change of administrations, that seems certainly the most  
13 practical goal from the perspective of being able to get  
14 something on the books. Is that a goal that you can undertake  
15 now and to which I can express an expectation and direction  
16 coming out of this conference?

17 MS. JOYCE: Yes, your Honor. Because if it's going to  
18 be a yes, it should be fairly easy to put together a consent  
19 order. I think it will be fairly easy to meet that December 22  
20 date, to have a consent order if it's going to be on consent.

21 THE COURT: So we will say proposed consent order, if  
22 any, by December 22 -- of course, if it does go quickly, there  
23 is nothing that would prevent you from submitting it before  
24 December 22 -- regarding outside leadership for facilities.  
25 And in absence of consent order, positions to be included in

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1 the monitors' December 22 report.

2 Is that language acceptable, Ms. Friedberg?

3 MS. FRIEDBERG: Thank you, your Honor. I just had one  
4 question with respect to the fact, if the parties are in a  
5 position to submit a consent order, will you be requesting any  
6 information from the monitor with respect to other prior  
7 orders? There have been times when you have requested a  
8 declaration. I just thought I might as well ask these  
9 logistical questions now. Certainly, should you require one,  
10 we would be happy to furnish one. I don't know if it will be  
11 necessary in this case or not, but I thought we might as well  
12 think that through while we are here as well.

13 THE COURT: I appreciate you raising the question  
14 because these are fast-moving discussions. I haven't thought  
15 that all the way through, but it certainly wouldn't be  
16 something detrimental to the process. So my answer to you at  
17 this point would be, yes, I would request a monitors'  
18 declaration in support of the consent order.

19 Ms. Werlwas, you raised your physical hand.

20 MS. WERLWAS: Your Honor, just to offer our view,  
21 which is certainly that there are efficient ways we think in  
22 this case for the parties to agree upon or to stipulate, for  
23 example, to facts that might minimize the burden on the  
24 monitoring team to reproduce by declaration many of the facts  
25 that we believe would support this order. We think those are

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1 already the facts that the monitoring team has amply laid out.  
2 We understand the formal mechanism of essentially taking those  
3 facts into admissible evidence is what is at issue, but may we  
4 simply offer that we are happy to talk with the monitoring team  
5 and the parties about even more streamline mechanisms that  
6 would provide the record the Court needs?

7 THE COURT: So a consent order that would incorporate  
8 recitals by way of stipulation obviating the need for a  
9 separate monitor declaration?

10 MR. WERLWAS: Yes.

11 THE COURT: The Court would welcome that if the  
12 parties are able to do that.

13 Someone called Jeff had had a hand raised, but then  
14 that hand went away.

15 I am sorry. That was you.

16 MR. POWELL: We know there is a lot on the plate of  
17 the monitor, and if they want to submit a declaration shortly  
18 after the consent order is submitted, I think that would be  
19 perfectly fine. My concern was more to have sign off. If we  
20 are going to get sign off before the change in administration,  
21 I do think I would support the monitor submitting a  
22 declaration, given the labor-related issues here and the legal  
23 issues and the factual findings that need to go with this type  
24 of relief, but certainly open to whatever time frame for that  
25 declaration that works for the monitor's team.

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1 THE COURT: I will just ask you all to work together  
2 in the most efficient way. And, of course, if the monitors'  
3 declaration would come afterward, then that would also affect  
4 the Court's ability to act on the proposed consent order. So I  
5 think it's everybody's goal, and certainly in the interests of  
6 all of the people affected by this, for the process to go as  
7 smoothly and simply and quickly as it can, if it is going in  
8 the direction of a consent order.

9 Ms. Friedberg, you have your electronic hand up.

10 MS. FRIEDBERG: I just want to mention I very much  
11 appreciate Mr. Powell's consideration of our time, but should a  
12 declaration be needed by the 22nd, we certainly would be in a  
13 position to furnish it on that date.

14 To the extent that we can minimize negotiation given  
15 the short time frame, I certainly would support that. I think  
16 the development of a declaration has always been one that the  
17 monitoring team can efficiently provide. So I just would  
18 strongly recommend for the parties, with respect to my  
19 experience negotiating these matters, to minimize what needs to  
20 be negotiated in order to ensure we can be in a position to  
21 have a consent order within 20 days, that we do that. So if  
22 that means that the monitor shall provide a declaration, we  
23 certainly would be happy to do that and could easily put one  
24 together.

25 THE COURT: Very good. Thank you.



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1 Ms. Joyce, did you want to say anything further before  
2 I return to Ms. Werlwas for her remarks?

3 MS. JOYCE: No, thank you, your Honor.

4 THE COURT: Thank you, Ms. Joyce.

5 Ms. Werlwas.

6 MS. WERLWAS: Thank, your Honor.

7 This has been a very helpful conversation and  
8 discussion so far. We do want to make clear in our remarks  
9 that we recognize there has been no dearth of industriousness  
10 or activity on the parts of the city, the monitor, and the  
11 parties since we all met last. And although the specific  
12 topics arising from the remedial orders that we are discussing  
13 today, which are of course but a subset of the relief that is  
14 necessary to correct the violations in this case, is a limited  
15 approach, we want to make clear that we do think this kind of  
16 prompt and sustained attention that we are giving these  
17 specific issues today is critical. We are very concerned about  
18 ensuring that the relief that these remedial orders secured to  
19 the plaintiff class is faithfully and fully implemented. And  
20 to that end, we think that today's opportunity to exchange  
21 information is critical to charting the path forward.

22 In particular, we welcome the information that the  
23 monitoring team has provided concerning its views of progress  
24 made to date. We absolutely welcome progress. We think that  
25 decisions about paths forward would benefit from some further

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1 explication or updates of the facts that were previously  
2 presented to the Court, such as, for example, the effect of the  
3 city's inability to ensure that its workforce shows up to work  
4 and how that impacts its ability to comply with the  
5 court-ordered obligations in this case.

6 To be sure, we do understand today the facts are  
7 highly dynamic and the relief is highly dynamic. Indeed, just  
8 yesterday, we received a report from one of our clients who we  
9 represent in their criminal matter, who has been in the intake  
10 unit at GRVC, or was in the intake unit at GRVC over that  
11 Thanksgiving week, from Tuesday until Saturday, transferred to  
12 then VCBC, and had been there for five days in intake since.  
13 These are the kind of fluid, quickly moving facts about  
14 compliance with the remedial order that necessarily mean  
15 whatever we all present today is just a snapshot in time but  
16 that we hope the city can address today.

17 We don't want the factual updates to subsume our  
18 recognition that, despite the activity and the enormous  
19 activity around these issues as the October report, the  
20 situation remains dire. We welcome the progress, though,  
21 frankly, from where we were in August and September, there is  
22 almost no room to go but up. And even where we are now, the  
23 facts that Mr. Powell presented to the Court demonstrate to us  
24 that there is a persistent and quite horrific pattern of  
25 violence persisting in our jails. Our plaintiff class members

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1 are being sprayed. They are being beaten on a daily basis.

2 This is rendering even very short stays in custody traumatic,  
3 violent, and life threatening.

4 The remedial measures that we are discussing today are  
5 unequivocally both necessary and important to obtaining  
6 progress in abating these violations, but we must note that the  
7 stubborn fact remains that six years into this case, the very  
8 harms that we have all sought to abate in entering this consent  
9 judgment have only gotten worse. And the current approach, the  
10 six years of initiatives that have been pursued, with best  
11 efforts and great dedication, have not corrected the  
12 constitutional violations.

13 From the presentations today, it appears to us that  
14 with respect to how to move forward on the issues we have  
15 discussed so far, most particularly, the external hiring that  
16 has been the principal focus of the conversation thus far, we  
17 await and will continue conversations with the monitoring team  
18 and the city about what the proposed relief will look like, in  
19 particular, a security monitor. We think it's premature  
20 frankly for us to have a significant view on that proposal  
21 because it still is very much in formation, and we look forward  
22 to learning more so that we can understand what relief that  
23 could secure and what it leaves essentially uncovered, if you  
24 will. And we look forward to hearing more from the city, in  
25 particular, about what points of agreement there are, the role

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1 a security manager would play, and where this relatively robust  
2 proposal is problematic for the city. We, quite frankly, don't  
3 know what their view is on what that proposal intends to build  
4 out. But we expect that the conversations that we will have  
5 with the city and the monitors over the next few weeks will  
6 provide some further information from which we can know where  
7 to go forward.

8 We have looked forward to discussing any particular  
9 issues on this agenda, particularly the ones also that we have  
10 not had an opportunity to address as a group discussion  
11 regarding compliance with the intake requirements, or the  
12 updates on the staffing that were principal focuses of the last  
13 conference, and we welcome that opportunity. But we also look  
14 forward to the conversations that we will have over the next  
15 few weeks with the parties and focusing as well on what we need  
16 to do to immediately address the harm that is being visited  
17 every day on the plaintiff class.

18 THE COURT: Thank you, Ms. Werlwas.

19 Today we are running into a problem of time, as this  
20 conference was allocated an hour and a half. I think that we  
21 have made very, very important progress with pinpointing both a  
22 process and time frame for the further development of  
23 information about the security position and that being shared  
24 with the government and the plaintiffs' class, and also,  
25 importantly, the time frame for rapid, focused and action on

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1 consent approach to the outside hires for the uniformed  
2 position, if that's going to be feasible.

3 I will now hear from Ms. Friedberg before I make a  
4 suggestion as to how to proceed.

5 So Ms. Friedberg.

6 MS. FRIEDBERG: Thank you.

7 I just wanted to share with the Court two pieces of  
8 information that may impact how you think we should move  
9 forward. One with respect to staffing, the other with respect  
10 to intake. Just an overarching comment that the monitoring  
11 team has engaged a nationally recognized expert to conduct a  
12 staffing analysis. That began in July. A very short summary  
13 of that work to date will be included in the twelfth monitors'  
14 report that will be filed on December 6. Additional work is  
15 needed before that complex project is completed. It certainly  
16 overlaps with a lot of the work with respect to absenteeism,  
17 but neither one of these things can be seen in a vacuum. The  
18 way in which staff may or may not be coming to work, but also  
19 how they are being deployed, those are kind of mutually  
20 connected, and so that work does remain, just to give you some  
21 additional context with respect to staffing.

22 With respect to intake, I will note that the  
23 monitoring team has seen progress in that area. There are sort  
24 of two different issues with respect to intake. One, the use  
25 of intake for new admissions, and the rest what you would refer

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1 to as either inter- or intra-facility transfers. The  
2 monitoring team recently received some information, both with  
3 respect to some stays for new admissions that go beyond the  
4 time period allotted; separately, we have received some  
5 information with respect to individuals that are in intake  
6 longer than 24 hours in the bucket of inter/intra-facility  
7 transfer. Those are tracked and managed both a little  
8 differently, that's why I separate those out. We are going to  
9 review that information, but just to echo the sentiments of Mr.  
10 Martin, certainly what we have seen with respect to processing  
11 and intake overall, there has been a vast improvement from what  
12 ultimately brought about the conditions for the requirements in  
13 the second remedial order, not to take away that there is much  
14 more work to be done, but I did just want to provide the Court  
15 with that brief update before we ended today.

16 THE COURT: Thank you, Ms. Friedberg.

17 What I suggest -- I am sorry. Mr. Powell.

18 MR. POWELL: I was just going to note very briefly  
19 that the one area in the security initiatives in the September  
20 order that we were here to discuss, there was a requirement  
21 that the 24-hour cap does apply to, as Ms. Friedberg said, both  
22 new admissions and intra-facility transfers. We do have  
23 serious concerns with the report of the monitor noting the  
24 system to track the time of an inmate's stay in an intake  
25 facility during the intra-facility, and just to explain what

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1 that is. It said if it's a new admission, it's someone who is  
2 in the jail, needs to be removed, maybe they were involved in  
3 an incident, they are put in intake. It seems, based on the  
4 monitor's reporting, that there still is no reliable system to  
5 track the time that inmates stay in intake. That was required  
6 by the remedial order. It seems like that has not been  
7 complied with. We don't have to do it now, but we are  
8 interested in the city's progress on making sure, if they can't  
9 comply with the requirement to cap the period of 24 hours, if  
10 they can accurately track the period. So that is one other  
11 concern in the remedial order that we wanted to flag for the  
12 Court. Sorry to interrupt, your Honor.

13 THE COURT: Not an interruption. An important  
14 interjection.

15 So what I was going to suggest is that, there is quite  
16 a remaining agenda, but that you meet and confer offline on the  
17 specific concerns and data points that if we had more time we  
18 would have been able to discuss now. See if you can either  
19 identify sufficient progress so that another specific proposal  
20 doesn't have to be brought to the Court, or if not, formulate  
21 specific issues to take up with the Court. And in connection  
22 with the December 22 report, or before that as may be  
23 appropriate, let the Court know whether you believe another  
24 near-term conference to continue some of these discussions is  
25 necessary or whether you are -- I will put it that way. If

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1 you're making sufficient progress in the meet-and-confer, I  
2 won't put the burden on you of making a "we don't need a  
3 conference" report to the Court. But if you do believe that  
4 you need a conference, then we will set something up. And I am  
5 going to be getting the twelfth monitoring report and the  
6 December 22 report, and I am hoping a consent order that  
7 addresses the outside hiring into uniform positions, or at  
8 least knowledge of what needs to be the path forward on that  
9 issue.

10 Ms. Werlwas.

11 MS. WERLWAS: Your Honor, we welcome that approach and  
12 certainly will continue to meet and confer immediately to  
13 resolve the issues, if possible, that are on the agenda.

14 With respect to your questions about what further  
15 action may be needed, I did simply think it would be remiss if  
16 we did not note our view as plaintiffs that even if there is a  
17 resolution of the specific issues that are the topics for  
18 today's conference, we do simply want to raise our concern that  
19 we do believe that further proceedings relatively soon or  
20 further conference with the Court may be necessary, because in  
21 our view the need for relief exceeds the scope of this  
22 particular remedial order and the issues that we were seeking  
23 to resolve today. And we do not want to leave with the  
24 impression that we think that the resolution of these  
25 particular issues alone will set us on the entire course needed



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1 going forward, and would welcome certainly discussing among the  
2 parties, and, if necessary, to seek the Court's guidance on the  
3 ways in which we can proceed given what, in our view, appears  
4 to be the city's inability to resolve the problems and the  
5 questions of what further remedies, beyond the remedies we are  
6 discussing today, whether it is receivership, whether it is  
7 changing the parameters of the appointees that are being  
8 discussed today, are necessary. So we did not want to leave  
9 the Court with the impression that we think that this  
10 meet-and-confer will resolve all of the matters that have  
11 brought us to the Court today.

12 THE COURT: Thank you. While I am very optimistic  
13 about the meet-and-confer, I did not view it as something that  
14 would solve all of the problems going forward, and the monitor  
15 hasn't suggested that either. The monitor has suggested a  
16 plan, a sequenced plan of action, and has identified what the  
17 monitor believes to be fundamental problems that need to be  
18 addressed in order to be able to effectively move on the many  
19 other important and immediate, if you will, issues that have to  
20 be addressed for the implementation of the relief that has  
21 already been ordered and, further, to ameliorate the  
22 conditions. And so, that is to say that I am hearing, I think,  
23 all around here that there is work going on, there is work that  
24 is clearly agreed to be necessary, that there is deep and  
25 appropriate concern about the conditions in which the inmates

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1 are living and the staff are working, and there may be  
2 disagreements about the particular sequence of activities or  
3 whether very specific things should be addressed in a specific  
4 way or in a different way in the short-term.

5 So as you meet and confer, work collaboratively, as  
6 you have done, and I want to commend you all for doing that,  
7 and commend particularly the monitoring team for their  
8 leadership and their creativity in proposing and undergirding  
9 progress toward solutions and accountability. There is much  
10 more to be done. So be as specific on questions or proposals  
11 that you wish to introduce to this mix as you can be, so that  
12 your discussions can be focused and productive, and let me know  
13 when you think it is necessary and appropriate to come back  
14 together for another conference such as this, whether it's  
15 before or after the upcoming winter holidays. But I will  
16 certainly look forward to receiving the two reports that we  
17 have talked about, and I know that I am leaving these specifics  
18 and ongoing discussions in the hands of people who are deeply  
19 concerned, deeply talented, and all very, very much focused on  
20 the conditions that are being faced by everyone involved with  
21 Rikers and the city jails now. So I am not leaving this  
22 conference believing in any way, or thinking it is in any way  
23 appropriate for there to be stasis or thinking that there will  
24 be inactivity. I expect that there will be ongoing, focused,  
25 effective and productive activity, and I thank you all for

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1 that.

2 Is there anything else that we should discuss before  
3 we adjourn? It's now a little after 11:30.

4 Thank you. Seeing no hands raised, I again thank you  
5 all. I look forward to the submissions. I wish you progress  
6 and personal safety and good health.

7 Thank you, all.

8 (Adjourned)